

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY – CAMDEN

Plaintiff

CITY SELECT AUTO SALES, INC. :

v. :

Defendants

: **No.1:11-CV-02658-JBS-KMW**

DAVID RANDALL ASSOCIATES, INC. :

& :

RAYMOND MILEY, III :

v. :

Third Party Defendants

CAROLINE ABRAHAM :

d/b/a Business to Business Solutions

& :

JOEL ABRAHAM :

d/b/a Business to Business Solutions

ORDER

NOW, this ____ day of _____, 2013, upon consideration of the Defendants' Motion to Cite Additional Authority, it is ORDERED that the Motion is GRANTED.

BY THE COURT:

HON. JEROME B. SIMANDLE, C.J.

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DEFENDANTS' MOTION TO CITE ADDITIONAL AUTHORITY

For the reasons set forth below, Defendants David Randall Associates, Inc., and Raymond Miley, III, by and through their counsel, Flamm Walton PC, hereby request leave to cite an opinion that was just issued by the United States District Court for the Southern District of Florida in a factually-similar TCPA case, ***Palm Beach Golf Center-Boca, Inc., v. Sarris***, No. 12-80178-CIV-Williams.

1. The Plaintiff's Renewed Motion for Class Certification was argued on October 23, 2013.
2. One of the issues the Defendants argued is that the Plaintiff lacks standing under Article III of the United States Constitution. The

Defendants directed the Court's attention to an analysis of that issue that was made in a similar TCPA case by the United States District Court for the Eastern District of Michigan, **Compressor Engineering Corp. v. Manufacturers Financial Corp, et al.**, USDC ED Michigan, No. 091444 (2011).

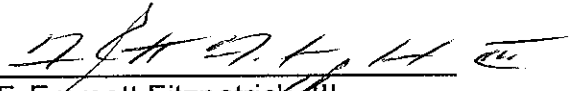
3. On October 22, 2013 the United States District Court for the Southern District of Florida granted summary judgment to the defendant in a case that involves facts almost identical to the instant case, **Palm Beach Golf Center-Boca, Inc., v. Sarris**, No. 12-80178, Dkt. No. 103. That Court carefully analyzed the Article III standing issue and found that the named plaintiff – who like the instant plaintiff had no evidence that he actually received the alleged fax and never read the complaint that was filed in his name – lacked Article III standing.
4. The **Sarris** Court specifically noted that those courts which have found that the TCPA only requires proof that a defendant sent a fax advertisement have failed to address fundamental standing requirements of Article III. See **Sarris, supra**, No. 12-80178, Dkt. No. 103, at p. 26.
5. The **Sarris** decision is directly on point both legally and factually with the issues presented by the Plaintiff's Renewed Motion for Class Certification, and an examination of that opinion will help inform the Court.

WHEREFORE, the Defendants respectfully request that the Court grant them leave to cite the recent case of **Palm Beach Golf Center-Boca, Inc., v. Sarris**, No. 12-80178, Dkt. No. 103, as additional support for their Brief in Opposition to the Plaintiff's Renewed Motion for Class Certification. A copy of that opinion is attached as Exhibit A.

FLAMM WALTON, PC, by:

Date: 10-30-13

By:


F. Emmett Fitzpatrick, III

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& :

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DEFENDANTS' MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO CITE ADDITIONAL AUTHORITY

The Defendants incorporate by reference the attached Motion.

FLAMM WALTON, PC, by:

Date: 10-30-13

By:


F. Emmett Fitzpatrick, III

CERTIFICATE OF SERVICE

I certify that I served a copy of the attached document upon the following person, via first class United States Mail, on the indicated date:

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Unrepresented Third Party Defendant

Date: 10-30-13


F. EMMETT FITZPATRICK, III